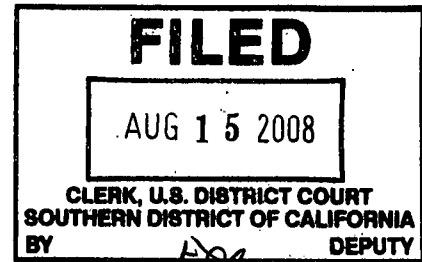


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Attorneys for the Plaintiff
 Jon Daugherty

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|--|---|
| <p>Jon Daugherty</p> <p>Plaintiff,</p> <p>v.</p> <p>West Shore Collections, Inc. and Philip Landsman</p> <p>Defendants.</p> | <p>Case Number: 08 CV 1503 LAB AJB</p> <p>Complaint For Damages</p> <p>Jury Trial Demanded</p> |
|--|---|

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

HYDE & SWIGART
San Diego, California

1 to insure that those debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote
3 consistent State action to protect consumers against debt collection abuses.

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard
11 for the debtor's rights and that debt collectors must be prohibited from
12 engaging in unfair or deceptive acts or practices.

13 3. Jon Daugherty, (Plaintiff), through Plaintiff's attorneys, brings this action to
14 challenge the actions of West Shore Collections, Inc. and Philip Landsman,
15 ("Defendants"), with regard to attempts by Defendants to unlawfully and
16 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
17 Plaintiff damages.

18 4. Plaintiff makes these allegations on information and belief, with the exception
19 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
20 Plaintiff alleges on personal knowledge.

21 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendants
22 were knowing and intentional, and that Defendants did not maintain
23 procedures reasonably adapted to avoid any such violation.

24 JURISDICTION AND VENUE

25 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
26 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.

27 //

28 //

7. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

8. Because Defendants do business within the State of California, personal jurisdiction is established.

9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

PARTIES

10. Plaintiff is a natural person who resides in the City of San Diego, County of San Diego, State of California.

11. Defendant West Shore Collections, Inc., and Defendant Philip Landsman are from the City of Woodland Hills, the County of Los Angeles, and the State of California. Plaintiff is informed and believes that Defendant West Shore Collections, Inc., now does business in California as West Shore Connections, Inc. West Shore Connections, Inc. is from the City of Sherman Oaks, the County of Los Angeles, and the State of California.

12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

13. Defendants are persons who use an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and are therefore debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

14. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

1 15. Defendants, in the ordinary course of business, regularly, on behalf of
2 themselves, or others, engage in debt collection as that term is defined by
3 California Civil Code § 1788.2(b), are therefore debt collectors as that term is
4 defined by California Civil Code § 1788.2(c).

5 16. This case involves money, property or their equivalent, due or owing or
6 alleged to be due or owing from a natural person by reason of a consumer
7 credit transaction. As such, this action arises out of a consumer debt and
8 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

9 **FACTUAL ALLEGATIONS**

10 17. At all times relevant to this matter, Plaintiff was an individual residing within
11 the State of California.

12 18. At all times relevant, Defendants conducted business within the State of
13 California.

14 19. Sometime before May 30, 2007, Plaintiff is alleged to have incurred certain
15 financial obligations to Providian Bank.

16 20. These financial obligations were primarily for personal, family or household
17 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
18 §1692a(5).

19 21. These alleged obligations were money, property, or their equivalent, which is
20 due or owing, or alleged to be due or owing, from a natural person to another
21 person and are therefore a “debt” as that term is defined by California Civil
22 Code §1788.2(d), and a “consumer debt” as that term is defined by California
23 Civil Code §1788.2(f).

24 22. Sometime thereafter, but before May 30, 2007, Plaintiff allegedly fell behind
25 in the payments allegedly owed on the alleged debt. Plaintiff currently takes
26 no position as to the validity of this alleged debt.

- 1 23. Subsequently, but before May 30, 2007, the alleged debt was assigned,
2 placed, or otherwise transferred, to Defendant West Shore Collections, Inc.
3 for collection.
- 4 24. On May 30, 2007, Defendant and attorney Philip Landsman, on behalf of
5 Defendant West Shore Collection, Inc., filed a lawsuit against Plaintiff in the
6 Superior Court of California, County of Los Angeles, case number 07E04952,
7 in the amount of \$ 9,589.00, with a demand for interest at the rate of 23.99
8 percent, plus attorney fees.
- 9 25. This lawsuit against Plaintiff was a "communication" as that term is defined
10 by 15 U.S.C. § 1692a(2), and an "initial communication" consistent with 15
11 U.S.C. § 1692g(a).
- 12 26. This lawsuit was also a "debt collection" as Cal. Civ. Code 1788.2(b) defines
13 that phrase, and an "initial communication" consistent with Cal. Civ. Code §
14 1812.700(b).
- 15 27. Defendants filed the aforementioned lawsuit despite the fact that Defendant
16 West Shore Collections, Inc. was a defunct company no longer authorized to
17 do business, and lacking capacity to file suit against Plaintiff. The California
18 Franchise Tax Board suspended Defendant West Shore Collection, Inc.'s
19 corporate powers, rights and privileges as of February 1, 2002.
- 20 28. Defendants violated California Tax and Revenue Code Section 2330.
- 21 29. Defendant and attorney Landsman knowingly represented a corporation with
22 a suspended status and is guilty of a misdemeanor under California Tax and
23 Revenue Code Section 19719.
- 24 30. Through this conduct, Defendant used a false, deceptive, or misleading
25 representation or means in connection with the collection of a debt.
26 Consequently, Defendant violated 15 U.S.C. § 1692e, as well as Cal. Civ.
27 Code § 1788.17.
- 28

31. Through this conduct, Defendant used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendant violated 15 U.S.C. § 1692f, as well as Cal. Civ. Code § 1788.17.

32. At no time has Plaintiff ever resided in Los Angeles County, and never entered into an agreement regarding the alleged debt in Los Angeles County.

33. Defendant brought this legal action against Plaintiff unrelated to real property in a judicial district or similar legal entity that is outside of where Plaintiff allegedly signed the contract sued upon and is outside the judicial district or similar legal entity where Defendant resided at the commencement of the action. This conduct by Defendant violated 15 U.S.C. § 1692i, as well as Cal. Civ. Code § 1788.15(b) and Cal. Civ. Code § 1788.17.

34. Plaintiff is informed and believes, and thereon alleges, that Defendants initiated the aforementioned lawsuit well outside the statute of limitations permitted by California law. This action was an unfair and/or unconscionable attempt to collect an alleged debt as well as an attempt to collect a debt not permitted by law thereby violating 15 U.S.C. §§ 1692f and 1692f(1). Because Defendants violated 15 U.S.C. §§ 1692f and 1692f(1), it also violated Cal. Civ. Code § 1788.17.

35. Defendants' conduct also violated Bus. & Prof. Code § 6077.5.

36. In bringing the aforementioned lawsuit, Defendants' failed to conduct a diligent investigation prior to the filing of the lawsuit, thereby violating its professional duty, and the requirements set forth in the Federal Rules of Civil Procedure.

37. Defendants' failure to conduct a reasonable inquiry into the facts or merits of the allegations resulted in numerous violations of the FDCPA and RFDCPA. Specifically, Defendants violated 15 U.S.C. §§ 1692e, 1692e(10), and 1692f. Because Defendants' actions violated 15 U.S.C. §§ 1692e, 1692e(10), and 1692f, it also violated Cal. Civ. Code § 1788.17.

38. The filing of the aforementioned lawsuit by Defendants also constituted an attempt to collect an amount not authorized by the agreement creating the debt or permitted by law in violation of 15 U.S.C. § 1692f(1). Because Defendants violated 15 U.S.C. § 1692f(1), it also violated Cal. Civ. Code § 1788.17.

39. Defendants' actions constituted false, deceptive, or misleading representation or means in connection with the collection of the alleged debt. As such, this action by Defendants violated 15 U.S.C. §§ 1692e and 1692e(10). Because Defendants' actions violated the language in 15 U.S.C. §§ 1692e and 1692e(10), it also violated Cal. Civ. Code § 1788.17.

40. Plaintiff has been harmed in defending the aforementioned frivolous lawsuit.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

41. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

43. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every defendant, jointly and severally.

COUNT II

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

44. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

45. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

46. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants, and Plaintiff be awarded damages from each and every defendant, as follows:

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

47. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
48. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
49. An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

50. An award of actual damages pursuant to California Civil Code § 1788.30(a);
51. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);

52. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

53. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 8/13/08

Hyde & Swigart

By: 

Joshua B. Swigart

Attorneys for the Plaintiff

HYDE & SWIGART
San Diego, California

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154122 - TC

**August 18, 2008
09:15:34**

Civ Fil Non-Pris

USAO #: 08CV1503

Judge.: LARRY A BURNS

Amount.: \$350.00 CK

Check#: BC2528

Total-> \$350.00

FROM: JON DAUGHTERY

VS

WEST SHORE COLLECTIONS

JS44

(Rev. 07/03)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of insulating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Jon Daugherty

DEFENDANTS

West Shore Collections, Inc. and Philip Landsman

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Los Angeles
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Joshua B. Swigart (SBN 225557)
411 Camino Del Rio South, Ste. 301
San Diego, CA 92108
Tel: 619-233-7770

ATTORNEYS (IF KNOWN)

Unknown

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

| | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. and the Rosembal Fair Debt Collection Practices Act, Cal Civ Code 1788-1788.32 (RFDCPA)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|---|--|--|---|---|
| <input type="checkbox"/> 110 Insurance | PERSONAL INJURY | PERSONAL INJURY | <input type="checkbox"/> 610 Agriculture | <input type="checkbox"/> 422 Appeal 28 USC 158 | <input type="checkbox"/> 400 State Reappointment |
| <input type="checkbox"/> 120 Marine | <input type="checkbox"/> 310 Airplane | <input type="checkbox"/> 362 Personal Injury- Medical Malpractice | <input type="checkbox"/> 620 Other Food & Drug | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust |
| <input type="checkbox"/> 130 Miller Act | <input type="checkbox"/> 315 Airplane Product Liability | <input type="checkbox"/> 365 Personal Injury - Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 | PROPERTY RIGHTS | <input type="checkbox"/> 430 Banks and Banking |
| <input type="checkbox"/> 140 Negotiable Instrument | <input type="checkbox"/> 320 Assault, Libel & Slander | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 630 Liquor Laws | <input type="checkbox"/> 820 Copyrights | <input type="checkbox"/> 450 Commerce/ICC Rates/etc. |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment | <input type="checkbox"/> 330 Federal Employers' Liability | PERSONAL PROPERTY | <input type="checkbox"/> 640 RR & Truck | <input type="checkbox"/> 830 Patent | <input type="checkbox"/> 460 Deportation |
| <input type="checkbox"/> 151 Medicare Act | <input type="checkbox"/> 340 Marine | <input type="checkbox"/> 370 Other Fraud | <input type="checkbox"/> 650 Airline Regs | SOCIAL SECURITY | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 345 Marine Product Liability | <input type="checkbox"/> 371 Truth in Lending | <input type="checkbox"/> 660 Occupational Safety/Health | <input type="checkbox"/> 861 HIA (13958) | <input type="checkbox"/> 810 Selective Service |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits | <input type="checkbox"/> 350 Motor Vehicle | <input type="checkbox"/> 380 Other Personal Property Damage | <input type="checkbox"/> 690 Other | <input type="checkbox"/> 862 Black Lung (923) | <input type="checkbox"/> 850 Securities/Commodities Exchange |
| <input type="checkbox"/> 160 Stockholders Suits | <input type="checkbox"/> 355 Motor Vehicle Product Liability | <input type="checkbox"/> 385 Property Damage Product Liability | LABOR | <input type="checkbox"/> 863 DIWC/DIWW (405(g)) | <input type="checkbox"/> 875 Customer Challenge 12 USC |
| <input type="checkbox"/> 190 Other Contract | <input type="checkbox"/> 360 Other Personal Injury | | <input type="checkbox"/> 710 Fair Labor Standards Act | <input type="checkbox"/> 864 SSID Title XVI | <input type="checkbox"/> 891 Agricultural Acts |
| <input type="checkbox"/> 195 Contract Product Liability | | | <input type="checkbox"/> 720 Labor/Mgmt. Relations | <input type="checkbox"/> 865 RSI (405(e)) | <input type="checkbox"/> 892 Economic Stabilization Act |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act | FEDERAL TAX SUITS | <input type="checkbox"/> 893 Environmental Matters |
| <input type="checkbox"/> 210 Land Condemnation | <input type="checkbox"/> 441 Voting | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus | <input type="checkbox"/> 740 Railway Labor Act | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | <input type="checkbox"/> 894 Energy Allocation Act |
| <input type="checkbox"/> 220 Foreclosure | <input type="checkbox"/> 442 Employment | <input type="checkbox"/> 530 General | <input type="checkbox"/> 790 Other Labor Litigation | <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 230 Rent Lease & Easement | <input type="checkbox"/> 443 Housing/Accommodations | <input type="checkbox"/> 535 Death Penalty | <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | | <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice |
| <input type="checkbox"/> 240 Tort to Land | <input type="checkbox"/> 444 Welfare | <input type="checkbox"/> 540 Mandamus & Other | | | <input type="checkbox"/> 950 Constitutionality of State |
| <input type="checkbox"/> 245 Tort Product Liability | <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 550 Civil Rights | | | <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 290 All Other Real Property | | <input type="checkbox"/> 555 Prisoner Conditions | | | |

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$ 76000

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 08/13/2008

SIGNATURE OF ATTORNEY OF RECORD

154122 8/13/08 SAC \$350

\\ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

ORIGINAL

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